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## HOUSE BILL NO. 2398

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary  
on February 15, 2023)

(Patron Prior to Substitute—Delegate Bell)

A BILL to amend and reenact § 9.1-902 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-59.1, relating to sexual extortion; penalty.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 9.1-902 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-59.1 as follows:**

**§ 9.1-902. Offenses requiring registration.**

A. For purposes of this chapter:

"Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section or a violation of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

"Offense for which registration is required" includes:

1. Any Tier I, Tier II, or Tier III offense;
2. Murder;
3. Any offense similar to a Tier I, Tier II, or Tier III offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof; and
4. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

"Tier I offense" means (i) any homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident, or (ii) any violation of, attempted violation of, or conspiracy to violate:

1. § 18.2-59.1; § 18.2-63 unless registration is required pursuant to subdivision 1 of the definition of Tier III offense; former § 18.2-67.2:1; § 18.2-90 with the intent to commit rape; former § 18.1-88 with the intent to commit rape; any former felony violation of § 18.2-346; any felony violation of § 18.2-346.01; any violation of subdivision (4) of § 18.2-355; any violation of subsection C of § 18.2-357.1; subsection B of § 18.2-374.1:1; former subsection D of § 18.2-374.1:1 as it was in effect from July 1, 1994, through June 30, 2007; former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June 30, 2007; subsection B of § 18.2-374.3; or a third or subsequent conviction of § 18.2-67.4, § 18.2-67.4:2, subsection C of § 18.2-67.5, § 18.2-386.1, or, if the offense was committed on or after July 1, 2020, § 18.2-386.2.

If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section; subsection A of § 18.2-374.1:1; or a felony under § 18.2-67.5:1.

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, § 18.2-366, or a felony violation of former § 18.1-191.

3. § 18.2-370.6.

4. If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § 18.2-51.2.

5. If the offense was committed on or after July 1, 2016, any violation of § 18.2-356 punishable as a Class 3 felony or any violation of § 18.2-357 punishable as a Class 3 felony.

6. If the offense was committed on or after July 1, 2019, any felony violation of § 18.2-348 or 18.2-349.

"Tier II offense" means any violation of, attempted violation of, or conspiracy to violate § 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3.

"Tier III offense" means a violation of, attempted violation of, or conspiracy to violate:

1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished against the complaining witness's will, by force, or through the use of the complaining witness's mental incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § 18.2-63 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of

60 § 18.2-67.5, § 18.2-370, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214,  
61 § 18.2-370.1, or § 18.2-374.1;

62 2. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where  
63 the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,  
64 subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) of § 18.2-48, § 18.2-361,  
65 § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed  
66 a Tier III offense only if the person has been convicted or adjudicated delinquent of any two or more  
67 such offenses, provided that person had been at liberty between such convictions or adjudications;

68 3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any  
69 felony offense listed in this section. An offense listed under this subdivision shall be deemed a Tier III  
70 offense only if the person has been convicted or adjudicated delinquent of any two or more such  
71 offenses, provided that the person had been at liberty between such convictions or adjudications; or

72 4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as  
73 described in § 1591 of Title 18, U.S.C.).

74 B. "Tier I offense" as defined in this section, "Tier II offense" as defined in this section, "Tier III  
75 offense" as defined in this section, and "murder" as defined in this section includes any similar offense  
76 under the laws of any foreign country or any political subdivision thereof or the United States or any  
77 political subdivision thereof.

78 C. 1. Any offense under the laws of any foreign country or any political subdivision thereof or the  
79 United States or any political subdivision thereof that is similar to (i) any Tier I, II, or III offense or (ii)  
80 murder as defined in this section shall require registration and reregistration in accordance with this  
81 chapter in a manner consistent with the registration and reregistration obligations imposed by the similar  
82 offense listed or defined in this section, unless such offense requires more stringent registration and  
83 reregistration obligations under the laws of the jurisdiction where the offender was convicted. In  
84 instances where more stringent registration and reregistration obligations are required under the laws of  
85 the jurisdiction where the offender was convicted, the offender shall register and reregister as required  
86 by this chapter in a manner most similar with the registration obligations imposed under the laws of the  
87 jurisdiction where the offender was convicted.

88 2. Any offense for which registration in a sex offender and crimes against minors registry is required  
89 under the laws of the jurisdiction where the offender was convicted shall require registration and  
90 reregistration in accordance with this chapter in the manner most similar with the registration and  
91 reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted  
92 unless such offense is similar to (i) any Tier I, II, or III offense or (ii) murder as defined in this section  
93 and the registration and reregistration obligations imposed by the similar offense listed or defined in this  
94 section are more stringent than those registration and reregistration obligations imposed under the laws  
95 of the jurisdiction where the offender was convicted. In instances where the similar offense listed or  
96 defined in this section imposes more stringent registration and reregistration obligations, the offender  
97 shall register and reregister as required by this chapter in a manner consistent with the registration and  
98 reregistration obligations imposed by the similar offense listed or defined in this section.

99 D. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a  
100 juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated  
101 delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in  
102 its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the  
103 offense require offender registration. In making its determination, the court shall consider all of the  
104 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed  
105 with the use of force, threat, or intimidation, (ii) the age and maturity of the complaining witness, (iii)  
106 the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the  
107 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the  
108 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the  
109 case. The attorney for the Commonwealth may file such a motion at any time during which the offender  
110 is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any  
111 hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent  
112 the offender unless an attorney has been retained and appears on behalf of the offender or counsel has  
113 already been appointed.

114 E. Prior to entering judgment of conviction of an offense for which registration is required if the  
115 victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment,  
116 warrant, or information does not allege that the victim of the offense was a minor, physically helpless,  
117 or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the  
118 victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in  
119 § 18.2-67.10, and shall also determine the age of the victim at the time of the offense if it determines  
120 the victim to be a minor. When such a determination is required, the court shall advise the defendant of  
121 its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo

contendere pursuant to § 19.2-296. If the court grants the defendant's motion to withdraw his plea of guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise. Failure to make such determination or so advise the defendant does not otherwise invalidate the underlying conviction.

**§ 18.2-59.1. Sexual extortion; penalty.**

A. Any person who maliciously disseminates or sells, or maliciously threatens to disseminate or sell, a videographic or still image created by any means whatsoever that depicts the complaining witness or such complaining witness's family or household member, as defined in § 16.1-228, as totally nude, or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast with the intent to cause the complaining witness to engage in sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.2-67.10, and thereby engages in sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.2-67.10, is guilty of a Class 5 felony. However, any adult who violates this section with a person under the age of 18 is guilty of a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.

B. A prosecution pursuant to this section may be in either the county, city, or town in which the communication was made or received.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.